IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6659 OF 2004

Nitin Vasant Ner — Petitioner

versus

The Nasik Municipal Corporation and another — Respondents

WITH
WRIT PETITION NO.7511 OF 2004

Narendra Kacheshwar Dani — Petitioner

versus

State of Maharashtra and two others — Respondents

M.V.Limaye with Ambar Joshi, adv. for petitioners.

R.V.Rane, adv. for R-1.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 5th November 2004

PC :

1. Rule is issued on both petitions.

2. Learned counsel appearing for respondents waive notice. By consent, petitions are taken up for hearing.

3. First respondent - Nasik Municipal Corporation is a statutory Corporation established under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). Respondent no.1 by advertisement dated 20th August 2000 invited applications for filling up posts of Assistant Commissioner/ Divisional Officer. Pursuant to this advertisement, the petitioners applied for the said post and written test was conducted and petitioners were called for interview, and their names were included in the merit list. Petitioner in Writ Petition No.6659 of 2004 is at sr.no.1 of merit list whereas petitioner in Writ Petition No.7511 of 2004 is at sr.no.3 of the list. Initially the advertisement dated 20th August 2000 was for two posts. But three more posts became available by the time process of selection was completed. Out of said five posts, two posts are reserved for open category, one post for Scheduled Caste candidate, one post for Scheduled Tribe and remaining post is reserved for Nomadic Tribe.

4. Under the regulations framed by the Corporation, 50% of the posts of Assistant Commissioner/ Divisional Officer are to be filled

in by promotion and remaining 50% to be filled in by direct recruits/nomination. It appears that right from the year 1982 quota of direct recruits have not been filled up by the first respondent. We may mention that Writ Petition No.9749 of 2003 filed on behalf of Municipal Karmachari Kamgar Sena challenging the decision to fill up the post by nomination came to be withdrawn by the Union. The Corporation thereafter appointed the Selection Committee in accordance with Section 54 of the Act which was headed by the Commissioner of Corporation. Although, both the petitioners were included in the merit list at sr.nos.1 and 3 respectively, appointment orders were not issued inspite of repeated representations made by petitioners. It appears that the Commissioner placed subject of appointment to the post of Assistant Commissioner / Divisional Officer before the General Body in the meeting of 29th July 2003. However, said subject was deleted from the agenda on the ground that the regulation prescribing ratio of 50% appointment by direct recruitment/nomination stands modified by the General Body Resolution being Resolution No.263, dated 24th July 2000. By this petition, petitioners are seeking to quash the said Resolution No.263, dated 24th July 2000 and todirect respondent Corporation to make

appointment of petitioners to the post of Assistant Commissioner/Divisional Officer as per the merit list.

5. We have heard Mr.Limaye, learned counsel appearing for petitioners, Mr.More, learned counsel appearing for respondent no.1 and learned AGP appearing for respondent no.2.

6. Nasik Municipal Corporation has framed regulations prescribing qualification required for appointment on the posts in Municipal services other than those specified in sub clause (a) of clause 3 of Section 457 of the Act. These regulations framed u/s 465(1)(a) of the Act are known as Rules and Regulations for various appointments to the Municipal services, and are framed vide Resolution No.75, dated 21st June 1985. Clause 5 of the regulation reads as follows :-

> "5. PROPORTION OF PROMOTIONS AND NOMINATIONS :- As prescribed in the Schedule 'A', the appointment is to be made both by promotion and nominations. The proportion of the promotions and nominations will be as follows :-
>
> (a) If the number of posts in the 'Cadre' is only one, the appointment shall ordinarily be made by promotion;
>
> (b) If, however, the number of posts in the 'Cadre' is more than one, the

promotions shall be 50% and nomination 50%'

(c) The appointment by promotion shall be considered on the basis of seniority-cum-merit."

7. Section 465(2) which is material for the purposes of present petition reads as follows :-

"465. The Standing Committee shall from time to time frame regulations not inconsistent with this Act and the rules but in consonance with any resolution that may be passed by the Corporation-

(1) ... ...

(2) The Standing Committee may also from time to time frame regulations not inconsistent with the provisions of this Act and the rules-

(a) determining the standards of fitness of buildings for human habitation;

(b) regulating the declaration of expenses incurred by the Commissioner under the provisions of this Act and the rules in respect of any materials or fittings, supplied or work executed or thing done to, upon or in connection with some building or land which are recoverable from the owner or occupier to be improvement expenses;

(c) prescribing the powers of the Municipal Chief Auditor with regard to the disapproval of and the procedure with regard to the settlement of objections to expenditure from the revenues of the Corporation;

(d) regulating the grant of permission by the Commissioner for the construction of shops, ware-houses, factories, huts or buildings designed for particular uses in any streets, portions of streets or localities specified in a declaration in force under section 269."

Under Sub Section 3 of Section 465 no regulation under sub section (1) or under clause (a) of sub section (2) shall have effect until it has been

confirmed by the Corporation and, if made under clause (h) of sub section (1), until it has in addition been confirmed by the State Government. The regulations in question have been framed by the Standing Committee under sub section 2(a) of Section 465 and they are confirmed by the General Body in accordance with sub section 3. If the Corporation intends to change or modify these regulations, the Corporation is obliged to follow the same procedure as prescribed in sub section 3 read with sub section 2(a) of Section 465. It is not permissible for the Corporation to modify or change the existing regulations by merely passing a resolution in the General Body Meeting. The proposed modification or change in the regulations will have to be first considered by the Standing Committee and then the subject can be considered by the General Body as prescribed by Section 466(3) of the Act. The impugned Resolution No.263 dated 24th July 2000 cannot be sustained in law.

8. Mr.More, learned counsel appearing for respondent no.1 contended that even otherwise, petitioners are not eligible as they lack the administrative experience and it is also noticed that petitioner in Writ Petition No.7511 of 2004 has been suspended by MSRTC. It is not possible for this Court to decide the question as to

whether petitioners are eligible and qualified. These questions can be considered by the General Body which is the appointing authority and an appropriate decision in that behalf may be taken by the General Body in accordance with law. We, direct that subject relating to the appointment of petitioners to the post of Assistant Commissioner/Divisional Officer be placed before the General Body Meeting and the General Body shall take appropriate decision in accordance with law in the light of this judgement within a period of two months from today. Petitions are accordingly disposed of.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)